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IN THE
COURT OF APPEALS OF INDIANA

LEROY DINKINS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0603-CR-274
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Carol Orbison, Judge
Cause No. 49G17-0512-FD-222158

March 6, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Leroy Dinkins was convicted following a bench trial of criminal confinement, a Class D felony, and domestic battery and intimidation, both Class A misdemeanors. Dinkins was sentenced to three years, with one year suspended to probation, for the criminal confinement conviction. He was sentenced to one year each for the domestic battery and intimidation convictions, with the sentences suspended to probation. The terms of probation for the domestic battery and intimidation convictions were to run concurrent to each other, but consecutive to the term of probation for the criminal confinement conviction. Dinkins now appeals his sentence. Concluding that Dinkins sentence is not inappropriate, we affirm.

Facts and Procedural History

Dinkins resided with his wife, Shannon, their infant son, and Shannon's four-year-old child at an apartment in Marion County. At four o'clock in the morning on December 28, 2005, Dinkins woke Shannon and told her to clean the house or he would "beat [her] ass." Transcript at 11. Shannon did as she was told and returned to bed. At nine o'clock in the morning, Dinkins again woke Shannon by slapping her repeatedly and angrily ordered her to make him breakfast. Dinkins slapped Shannon in the face because he did not like how the breakfast was cooked. The slap was painful and left red marks on Shannon's face.

In the afternoon, Dinkins became irritated because he did not have anything to smoke. Dinkins began calling Shannon degrading names and got a butcher knife out of a kitchen drawer and put it on the table, telling her, "Go ahead and kill yourself[,] you're crazy enough." Id. at 15. When Dinkins decided to leave the apartment to get something to smoke,

he pulled Shannon off the couch, grabbed her by the wrist, and made her go with him, despite the fact she told him she did not want to go and leave the children alone. Outside, Dinkins berated Shannon, saying, "[You're] a stupid bitch, you're moving to [sic] slow, quit playing games, why is [sic] your eyes wandering." Id. at 20-21. They encountered Velma Lambert, a friend and neighbor, as she was returning home from work. Velma asked where the children were, and said she would watch them at her house while Dinkins and Shannon went to the store. Dinkins and Shannon went to a nearby liquor store to purchase cigarettes and returned to Velma's to get the children. Velma remarked that the baby needed a clean diaper, and told Dinkins that she had found a job for him, saying, "[W]hy don't you get a job so ya'll don't have to worry about paying these bills . . . cause right now your babies [sic] in need of stuff." Id. at 33. Dinkins and Shannon returned to their apartment with the children and got into an argument. Dinkins hit Shannon on her chest, arms, and face, and threw the baby's milk out of the apartment into the rain. Velma came to the apartment to take Shannon to the store to buy milk and diapers and could hear Dinkins and Shannon arguing inside. Dinkins initially refused to let Velma into the apartment, but eventually relented and let Shannon go with Velma to the store, telling her to "bring your ass right back." Id. at 23.

Once in Velma's car, Shannon broke down crying and said to Velma, "I can't take it no more, I'm not goin back in there, he's doin to [sic] much to me and I'm tired of bein hit and cussed out [and] my baby ain't got no food." Id. at 35. When they got to the grocery store, Shannon saw a police car in the parking lot and told the off-duty officer what had been going on. She told the officer that Dinkins said, "[B]itch if you call the police again I don't

give a fuck if they're in my face or not I'll still beat your ass." Id. at 23. Additional officers were dispatched to Dinkins' apartment, at which time he was placed under arrest.

Dinkins was charged with criminal confinement for forcing Shannon out of the house; battery on a child causing injury for an incident Shannon related in which Dinkins kicked the infant's walker while the infant was in it, pushing the walker three feet across the floor and causing the infant's body and neck to snap back and forth; domestic battery; battery; and intimidation for threatening to beat Shannon if she contacted the police. Following a bench trial, the court found Dinkins guilty of all charges except for battery on a child. Dinkins was sentenced to three years for the criminal confinement conviction, with one year suspended to probation. Dinkins was sentenced to one year each for the domestic battery and intimidation convictions, with the sentences suspended to probation. The domestic battery and intimidation sentences were to run concurrent to each other, but consecutive to the probationary period for the criminal confinement conviction.[1]

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[1] The trial court found Dinkins guilty of the charge of battery relating to Shannon at the conclusion of the bench trial, and the chronological case summary for the trial date, February 9, 2006, reflects that Dinkins was convicted on four counts. The trial court stated at the sentencing hearing, held February 23, 2006, that the battery conviction was merged with the domestic battery conviction. However, the trial court failed to formally enter a finding on the chronological case summary regarding the battery count, showing only that Dinkins was sentenced on three counts. The trial court subsequently entered an order on March 31, 2006, showing that the battery count was merged with the domestic battery count. Dinkins filed his Notice of Appeal on April 25, 2006. The State filed a motion to dismiss Dinkins' appeal, contending that his Notice of Appeal should have been filed within thirty days of February 23, 2006. Dinkins responded that the case was not fully and finally adjudicated until the trial court's order of March 31, 2006. This court entered an order on October 25, 2006, denying the State's motion to dismiss and granting the State additional time in which to file its Appellee's Brief. In its brief, the State again urges that this appeal be dismissed as untimely. The issue has been raised, a response has been made, and the motions panel has considered the parties' respective positions. Although we can reconsider a ruling by the motions panel, see Members v. State, 851 N.E.2d 979, 981 n.2 (Ind. Ct. App. 2006), the State has not presented any additional authority establishing that the motions panel erred as a matter of law, and therefore, we are not inclined to revisit the motions panel's decision on this matter.

Discussion and Decision

I. Right to Appeal

Dinkins first contends that because the trial court did not enter a sentencing order stating the aggravating and mitigating factors on which it relied in sentencing him, he was unconstitutionally denied his right to challenge the trial court's exercise of its sentencing discretion on appeal. It is true that the trial court did not enter a written sentencing order. However, in reviewing a sentencing decision in a non-capital case, we are not limited to the trial court's written sentencing statement, but may also consider the trial court's comments in the transcript of the sentencing proceeding. Corbett v. State, 764 N.E.2d 622, 631 (Ind. 2002). The trial court in this case made the following statement:

> THE COURT: I don't believe that I have heard Mr. Dinkins of any situation involving a married couple in which, during which the husband and father of this wife's child treated his spouse with so much disrespect, humiliation, degradation on a constant basis. I don't think I have heard during a years that I've been on the bench a description of this kind of abuse that surpassed the physical abuse, the physical violence and it occurs to me Mr. Dinkins that the manner in which you treated your wife with such disrespect subjecting her to so much humiliation and degradation basically reflects on yourself and what you have allowed yourself to become. You have become in some sense a monster and yet you're a [sic] intelligent man I read over the pre-sentence report and you certainly have a lot of qualities that you have never developed but yet are there and I believe not only is the tragedy one [that] effects [sic] this young mother and her children but also is a tragedy, is your own tragedy.
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> I've heard enough from you Mr. Dinkins. You sit there and apologize to your wife but that's not, that's not going to erase what you did to her and the imprint that you have left on your baby and the mother . . . .
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> * * *
>
> And you are going to, hopefully, turn in and look at yourself in the mirror and do something about the man that you've made yourself. Because it's, it's a very sad, tragic, and ugly picture. That you could think that you could control another individual in the manner in which you have sought to control this young woman displays a very twisted mind. And from what I have

> read there is nothing in your background that would have foreseen the kind of man that you have made, turned yourself into and it's not that you can't do something about it.

Tr. at 79-80. Dinkins contention that the trial court did not issue a sentencing statement is incorrect.

To the extent Dinkins is arguing that this court should review error in a trial court's exercise of its sentencing discretion but no longer does because of the amendments to the sentencing statutes, we note first that he relies upon Anglemeyer v. State, 845 N.E.2d 1087 (Ind. Ct. App. 2006), trans. granted, for the proposition that all sentencing error is now considered harmless error. Our supreme court had granted transfer in Anglemeyer before Dinkins filed his brief, and it is not appropriate to cite that case for any purpose. Moreoever, we acknowledge that the advisory sentencing scheme[2] provides that a court may impose any legal sentence "regardless of the presence or absence of aggravating circumstances or mitigating circumstances," Ind. Code § 35-38-1-7.1(d), and we have held that the plain language of the statute seems to indicate that "a sentencing court is under no obligation to find, consider, or weigh either aggravating or mitigating circumstances." Fuller v. State, 852 N.E.2d 22, 26 (Ind. Ct. App. 2006), trans. denied. However, we have also held that if a trial court does find, identify, and balance aggravating and mitigating factors, it must do so correctly, and we will review the sentencing statement to ensure that the trial court did so.[3]

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[2] The advisory sentencing scheme, enacted in response to Blakely v. Washington, 524 U.S. 296 (2004), became effective April 25, 2005. Dinkins committed his crimes, was tried, convicted, and sentenced after that date, and therefore the advisory sentencing scheme applies to this case.

See Ind. Code § 35-38-1-3(3) ("if the court finds aggravating circumstances or mitigating circumstances, [the trial court shall include] a statement of the court's reasons for selecting the sentence that it imposes"); Primmer v. State, 857 N.E.2d 11, 17 (Ind. Ct. App. 2006), trans. denied. Thus, Dinkins' opportunity to challenge the trial court's discretion in sentencing him has not been foreclosed.

Finally, Dinkins cites Article VII, sections 4 and 6 as the source of his constitutional right to "appellate review to determine if the trial court abused its discretion in sentencing [him]." Brief of Appellant at 7. Article VII, section 4 provides, in relevant part, that "[t]he Supreme Court shall have, in all appeals of criminal cases, the power . . . to review and revise the sentence imposed." Article VII, section 6 provides, in relevant part, that the court of appeals "shall exercise appellate jurisdiction under such terms and conditions as the Supreme Court shall specify . . . and to the extent provided by rule, review and revision of sentences for defendants in all criminal cases." These constitutional provisions are implemented by Appellate Rule 7(B), which states that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." A Rule 7(B) analysis is what is guaranteed by the constitution, and it is an analysis entirely independent of a review of the trial court's sentencing discretion. See Childress v. State, 848

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[3] This applies only to Dinkins' felony conviction. With respect to Dinkins' misdemeanor convictions, Indiana Code section 35-50-3-2 states that "[a] person who commits a Class A misdemeanor shall be imprisoned for a fixed term of not more than one (1) year . . . ." Because this statute (like all misdemeanor sentencing statutes) does not provide a sentencing range with an advisory sentence, a trial court is not required to articulate and balance the aggravating and mitigating factors before imposing a sentence on

N.E.2d 1073, 1079-80 (Ind. 2006) (stating that even where the trial court meticulously follows the proper procedure in imposing a sentence, Rule 7(B) authorizes a reviewing court to revise a sentence). We can undertake a Rule 7(B) analysis regardless of whether the trial court enters a sentencing statement.

II. Inappropriate Sentence

Ultimately, however, despite arguing that he should be able to challenge the trial court's sentencing discretion, Dinkins does not actually do so. The only issue that Dinkins develops in his brief is that his sentence is inappropriate. The "nature of the offense" portion of a Rule 7(B) review for inappropriateness speaks to the statutory sentence for the class of crimes to which the offense belongs. See Weiss v. State, 848 N.E.2d 1070, 1072 (Ind. 2006). The "character of the offender" portion of the review refers to the general sentencing considerations and the relevant aggravating and mitigating circumstances. Corbin v. State, 840 N.E.2d 424, 432 (Ind. Ct. App. 2006).

Dinkins received the maximum possible sentence for his convictions,[4] although with a combination of suspended and concurrent sentences, he was ordered to execute only two of the possible five years, with an additional two years of probation to follow. As to the nature of his offenses, Dinkins contends that the trial court's statement concerning his "control" of Shannon is basically a restatement of one of the elements of his offenses. The trial court's

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a misdemeanor conviction. Creekmore v. State, 853 N.E.2d 523, 527 (Ind. Ct. App. 2006).

[4] Dinkins was convicted of a Class D felony, the sentence for which is "a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1 1/2) years." Ind. Code § 35-50-2-7(a). He was also convicted of two Class A misdemeanors, which, as stated above, are punishable by

comments about Dinkins' control of Shannon do not relate so much to his physical control of her on the date of these incidents in making her leave the apartment against her will or threatening to hurt her if she contacted the police as they do to his attempts in general to control her mental and emotional state. Dinkins also contends that there was no testimony from anyone other than Shannon that would tend to show that Dinkins physically harmed Shannon. He is apparently arguing that because he did not cause readily observable injury to Shannon, his offenses do not rank among the worst. Dinkins woke Shannon up at four-thirty in the morning, hit and berated her throughout the day in the presence of their children, and forced her to do things against her will. Shannon testified that when Dinkins hit her, it hurt, and left red marks on her face. Although within this class of offenses, we have seen worse, "[w]e should concentrate less on comparing the facts of this case to others, whether real or hypothetical, and more on focusing on the nature, extent, and depravity of the offense for which the defendant is being sentenced, and what it reveals about the defendant's character." Wilkie v. State, 813 N.E.2d 794, 805 (Ind. Ct. App. 2004), trans. denied (quoting Brown v. State, 760 N.E.2d 243, 247 (Ind. Ct. App. 2002), trans. denied).

With respect to his character, Dinkins argues that his lack of criminal history justifies a revision of his sentence. We acknowledge that these offenses represent Dinkins' first criminal convictions. However, it is not just Dinkins' criminal history that reflects upon his character. We also consider that he committed these offenses in the presence of young children and that these offenses represent not just a day-long assault on Shannon's body and

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a sentence of up to one year. See Ind. Code § 35-50-3-2. Dinkins received a three year sentence for his Class

mind, but an on-going pattern of abuse.[5]

In considering the nature and circumstances of the crime as described by the trial court and from our own review of the record, and in light of Dinkins' character, we cannot say that the trial court's imposition of a four-year sentence, with two years suspended to probation, is inappropriate.

Conclusion

Dinkins was not denied the right to appeal his sentence. In considering the nature of his offenses and his character, we hold that the sentence imposed by the trial court was not inappropriate.

Affirmed.

BAKER, C.J. and DARDEN, J., concur.

D felony conviction and one year sentences for each of his Class A misdemeanor convictions.

[5] In considering the character of an offender, a court may consider the offender's arrest record in addition to actual convictions. Although a record of arrest, without more, does not establish the fact that an offender committed a criminal offense and may not be considered as evidence of criminal history, it "may reveal that a defendant has not been deterred even after having been subject to the police authority of the State." Cotto v. State, 829 N.E.2d 520, 526 (Ind. 2005). Such information may be relevant to the assessment of a defendant's character in terms of the risk that he will commit another crime. Id. The pre-sentence report indicates that Dinkins has been arrested on three previous occasions for domestic battery.